IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7452 OF 2004

Maria Suraj Co-operative Housing Society Ltd. ... ... Petitioner.

Versus

Manual Gonsalves' Trust & Ors. ... . Respondents.

Ms. Preeti Shah for the Petitioner.
Mr. R. A. Thorat for Respondent No.2.

CORAM: S. A. BOBDE, J.

DATED : MARCH 1, 2005.

P.C. :

Rule.

2. Learned Counsel appearing for respondent No.2 waives service of Rule. By consent, Rule made returnable and heard forthwith.

3. This petition is by Defendants against the order dated 3rd September, 2004 by which the learned trial Court has held that the Issue of pecuniary jurisdiction is liable to be tried, but has nonetheless decided to proceed with the notice of motion.

4. Having heard the learned Counsel for the parties, it is clear that the impugned order is liable to be set aside. The petitioner applied for framing of the following three Issues :-

(1) Whether this Honourable Court has no jurisdiction to entertain and try this suit ?

(2) Whether the suit is bad for want of Notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960 ?

(3) Whether the Suit is bad for want of Notice under section 527 of the Mumbai Municipal Corporation Act, 1888 ?

It is clear that only proposed Issue No.1 pertains to pecuniary jurisdiction of the court and liable to be tried under Section 9A of the Code of Civil Procedure. The other two Issues are not to be

tried under Section 9A of the Code of Civil Procedure. On this application, the trial Court has framed the following Issue as a preliminary Issue :

(1) Whether all the defendants prove that this suit is not maintainable considering the pecuniary jurisdiction of this Court ?

5. Having done so, it is clear that the trial Court ought not to have decided to proceed with the notice of motion, but ought to have decided the Issue under Section 9A of the Code of Civil Procedure. Hence, the impugned order is set aside. The petitioner shall be at liberty to press for framing of the other two Issues at the appropriate stage.

6. Rule made absolute in the above terms. This petition is disposed of accordingly. There shall be no order as to costs.

Sd/-

S. A. BOBDE, J.